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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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SIEMENS CORPORATION
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170 WOOD AVENUE SOUTH
ISELIN, NJ 08830

EXAMINER

CHANG, SUNRAY

ART UNIT	PAPER NUMBER
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2121

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02/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/763,786	Applicant(s) FISCHER ET AL.	
	Examiner Sunray Chang	Art Unit 2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Examiner's Detailed Office Action

1. This office action is in responsive to the paper filed on December 20th, 2007.
2. Amendment under 37 CFR § 1.111 reconsideration and allowance of application is respectfully requested by applicant.
3. Applicant's arguments have been fully considered, however, they are not persuasive.
4. The rejection under 35 USC § 103(a) stands. The complete text has been included below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papadopoulos et al. (USPN 6,282,454) in view of Mori et al. (USPN 5,103,392).

Regarding claim 1,

Papadopoulos et al. teaches,

- A process control system, [industrial control system, Col. 2, lines 33 – 36]

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- operation running in the process control system [application program to display, Col. 4, lines 1 – 6; enables the data transfer between the application program and the user through the Internet, Col. 3, lines 48 – 60; Programmable logic controllers (PLCs) are widely used in industry and process control, Col. 2, lines 8 – 12; Using this interface, the user can retrieve all pertinent data regarding the operation of the PLC, including PLC configuration, I/O and register status, operating statistics, diagnostics, and distributed I/O configurations. Updates to operating software can also be downloaded through the Internet access, Col. 2, lines 58 – 63]

Papadopoulos et al. does not teach a processor adapted to determine a payment figure regarding the creation **or** removal of a process control function **or** regarding a user activity **or** regarding an execution of an automation function.

Mori teaches,

- a processor adapted to determine a payment figure regarding the creation **or** removal of a process control function **or** regarding a user activity **or** regarding an execution of an automation function. [a system for storing the history of use of marketable programs (software) such as marketable computer programs. By storage of the history of use, proprietors of marketable programs can charge for the exact amount of use of the software. Specifically, the system allows proprietors to obtain information on the exact state of use of software by a specific user and charge appropriately for that use, Col. 1, lines 14 – 23]

It would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to modify the teaching of Papadopoulos et al. to include "a processor adapted to determine a payment figure regarding the creation **or** removal of a process control function **or** regarding a user activity **or** regarding an execution of an automation function", for the purpose of making the use of such software more attractive to users [Col. 1, lines 14 – 23].

Regarding claim 2,

Papadopoulos et al. teaches,

A process control system according to claim 1, further comprising:

- a process control computer; [industrial control system, Col. 2, lines 33 – 36; Fig. 1; further see Col. 3, lines 29 – 47]
- a client computer; [personal computer, Fig. 1; further see Col. 3, lines 29 – 47] and
- the Internet, [Internet, Fig. 1; Col. 2, lines 33 – 36] wherein
- at least a part of the operations running in the process control system run on the process control computer. [Programmable logic controllers (PLCs) are widely used in industry and process control, Col. 2, lines 8 – 12; Using this interface, the user can retrieve all pertinent data regarding the operation of the PLC, including PLC configuration, I/O and register status, operating statistics, diagnostics, and distributed I/O configurations. Updates to

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operating software can also be downloaded through the Internet access, Col. 2, lines 58 – 63;

Fig. 1]

Regarding claim 3,

Papadopoulos et al. teaches,

- at least one field device for automation of at least one system component [PLC, application programs, a ladder program for controlling the I/O devices, Col. 4, lines 36 – 46] wherein
 - at least a part of the operations running in the process control system run on the field device.
- [the application programs, a ladder program for controlling the I/O devices, Col. 4, lines 36 – 46]

Regarding claims 4 and 8,

Papadopoulos et al. teaches,

A process control system according to claim 2, wherein

- the process control computer comprises a Web server [Web server module, Web site, Fig. 1 – 3; further see Col. 3, line 29 – Col. 4, line 35] and
- the client computer comprises an Internet browser [a personal computer (PC) 8 having a commercially available browser, Col. 3, lines 22 – 47] so that

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- the client computer can influence the operations running in the process control computer [the browser 10 functions as a remote human-machine interface or HMI control of the process control system, Col. 4, lines 1 – 6] via the Internet, [Fig. 1] wherein
- the operations can also include operations [application program, Col. 3, lines 48 – 60] by which further operations are initiated in further components of the process control system. [application programs includes a ladder logic program for controlling the I/O devices ... to send commands to the PLC and receive the response, Col. 4, lines 36 – 46]

Regarding claim 5,

Papadopoulos et al. teaches,

A process control system according to Claim 4, wherein the further components comprise

- field devices for monitoring and control of components of a technical system [PLC, application programs includes a ladder logic program for controlling the I/O devices ... to send commands to the PLC and receive the response, Col. 4, lines 36 – 46] that are connected by radio communication **and/or** by a fixed link to the process control computer, [Fig. 2, Fig. 3] wherein
- the further operations also comprise those operations that are executed in the field devices. [application programs includes a ladder logic program for controlling the I/O devices ... to send commands to the PLC and receive the response, Col. 4, lines 36 – 46]

Regarding claim 6

Papadopoulos et al. teaches,

A process control system according to claim 5, wherein

- communication between the components of the process control system is based on the TCP/IP transmission protocol (TCP/IP) [TCP/IP network, Ethernet network, Col. 4, lines 36 – 46; see further see Abstract, Col. 5, lines 20 – 28].

Regarding claims 7 – 13,

Papadopoulos et al. teaches,

- A process control system [industrial control system, Col. 2, lines 33 – 36]

Papadopoulos et al. does not teach the payment figure is a service fee to be paid by the user to an Application Service Provider.

Mori et al. teaches,

- the payment figure is a service fee to be paid by the user to an Application Service Provider. [use of software by a specific user and charge appropriately for that use, Col. 1, lines 20 – 21], for the purpose of making the use of such software more attractive to users [Col. 1, lines 14 – 23]

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Papadopoulos et al. in view of Mori et al., further in view of Baker et al. (USPN 7,035,898).

Regarding claim 14,

Papadopoulos et al. teaches,

- a process control system [industrial control system, Col. 2, lines 33 – 36]

Papadopoulos et al. does not teach a method for determining a payment figure, providing a processor unit adapted to record the creation and/or removal of a process control function and an execution of an automation function; providing a device adapted to record a user activity; and determining a payment figure by the processor unit using recorded data of the preceding steps.

Mori et al. teaches,

- a method for determining a payment figure, [a system for storing the history of use of marketable programs (software) such as marketable computer programs. By storage of the history of use, proprietors of marketable programs can charge for the exact amount of use of the software. Specifically, the system allows proprietors to obtain information on the exact state of use of software by a specific user and charge appropriately for that use, Col. 1, lines 14 – 23]

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- providing a device adapted to record a user activity; [storage of the history of use, the system allows proprietors to obtain information on the exact state of use of software by a specific user, Col. 1, lines 14 – 23] and
- determining a payment figure by the processor unit using recorded data of the preceding steps. [the system allows proprietors to obtain information on the exact state of use of software by a specific user and charge appropriately for that use, Col. 1, lines 14 – 23], for the purpose of making the use of such software more attractive to users [Col. 1, lines 14 – 23]

Baker teaches

- providing a processor unit adapted to record the creation and/or removal of a process control function and an execution of an automation function; [The present invention allows a user at a remote location, using a browser, to create and edit a PLC operating program by adding and deleting various components illustrated in the mimic page; Rearranging the components on the mimic page will result in a different operating program. The program can be saved on the programming device 21 for later transfer to the PLC 32. Col. 6, lines 42 – 61], for a user at a remote location to edit the operating program of the PLC 32 by accessing a web page associated with the program package 33 via the Internet, Col. 6, lines 42 – 44]

It would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to modify the teaching of Papadopoulos et al. to include "a method for

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determining a payment figure, providing a processor unit adapted to record the creation and/or removal of a process control function and an execution of an automation function; providing a device adapted to record a user activity; and determining a payment figure by the processor unit using recorded data of the preceding steps”, for the purpose of making the use of such software more attractive to users [Mori et al., Col. 1, lines 14 – 23] and for a user at a remote location to edit the operating program of the PLC 32 by accessing a web page associated with the program package 33 via the Internet [Baker et al., Col. 6, lines 42 – 44].

Response to Arguments

7. Applicant argues the 112, second paragraph rejection to “how to send the payment figure”. Since applicants indicates the “payment figure” been claimed are only “determining”. The examiner has withdrawn the 112, second paragraph rejection.

8. Since there is no transmission being claimed, a system as taught by Mori et al. which stores the history of use of programs consisting of a data processing apparatus and a program storage unit which can be “**adapted to**” be used by a proprietors to determine the payment figure based on the “system” stored information. The examiner can not see the necessity, in the claims, using only the processor to determine a payment figure; further, “processor unit” can be treated as a proprietor using a system; “**determine**” can be treated as “non-calculating related process”, for example, pulled from the database.

The applicant broadly claims a user using a computer to determine a payment regarding users’ activities, which would not be patented.

9. Applicants indicate Mori reference discloses “allows proprietors to obtain information on the exact state of use of software by a specific user and charge appropriately for that use” is different with “a processor unit adapted to determine a payment figure ...” which is disagreed

with. Since the processor is “adapted to” determine a payment figure, the payment can be determined by the proprietors by using the processor.

10. Applicants further argue “providing a history of use is not a disclosure of providing a payment figure” which is agreed, however, according to the claim language, the processor is only “adapted to” determine a payment figure, in fact, “proprietors obtain information provided by a computer for charging the user the exact amount of use of his program” can be read as “a processor unit adapted to determine a payment figure ...”.

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11. Further more, Mori teaches in col. 3, line 63 – col. 4, line 15, teaches “information of the charge payable by the user stored in the use history storage maybe a predetermined limit on the amount of cumulative charges of a user. The content of the use history storage can be emptied when the data to be stored into the use history storage exceeds the predetermined limit pf the capacity of storage of data ... transmitted through the input/output processing portion to the account portion in the pool station ... information on the balance of the charge payable by the user stored in the use history storage can be revised to raise the limit of the cumulative charges stored in the use history storage by instructions supplied through the input/output processing portion from the account portion in the program pool station”. The charges, “balance, limit”, are determined by the system, not by the proprietors.

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¶*Conclusion*

9. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence Information

10. Any inquires concerning this communication or earlier communications from the examiner should be directed to Sunray Chang, who may be reached Monday through Friday, between 6:00 a.m. and 3:00 p.m. EST. or via telephone at (571) 272-3682 or facsimile transmission (571) 273-3682 or email sunray.chang@uspto.gov.

If you need to send an Official facsimile transmission, please send it to (571) 273-8300.

If attempts to reach the examiner are unsuccessful the Examiner's Supervisor, Albert Decady, may be reached at (571) 272-3819.

Hand-delivered responses should be delivered to the Receptionist @ (Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22313), located on the first floor of the south side of the Randolph Building.

Finally, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Moreover, status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) toll-free @ 1-866-217-9197.

Sunray Chang

Patent Examiner

Art Unit 2121

United States Department of Commerce

Patent & Trademark Office


/S. R. C./ Examiner, Art Unit 2121

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February 22, 2008

/Albert DeCady/

Supervisory Patent Examiner, Art Unit 2121

<div>Application Number</div> <div></div>	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/763,786	FISCHER ET AL.	
	Examiner	Art Unit	
	Sunray Chang	2121	